

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MADISON BOARDWALK, LLC,

FINAL PRETRIAL CONFERENCE
ORDER

Plaintiff,

13-cv-288-bbc

v.

OMEGA COMMERCIAL FINANCE CORP.
and VON C. CUMMINGS,

Defendants.

A final pretrial conference was held in this case on September 24, 2014 before United States District Judge Barbara B. Crabb. Plaintiff appeared by Stephen Ferris. Defendant Omega Commercial Finance Corp. appeared by John Hess and James Friedman. There was no appearance by or on behalf of defendant Von Cummings.

Counsel advised the court that they expect to settle the entire case after mediation with Magistrate Judge Peter Oppeneer. In the event the settlement does not happen, this order will apply to the trial.

Counsel predicted that the case would take no more than 3 days to try. They

understand that the jury for this trial will be the second one selected on Monday, September 29 and that trial days will begin at 9:00 and will run until 5:00 or 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges against the panel. After the jury is selected, the court will read the introductory instructions to the jury.

Counsel agreed that all witnesses would be sequestered. Counsel are familiar with the court's visual presentation system.

No later than noon on Friday, September 26, 2014, plaintiff's counsel will advise defendants' counsel of the witnesses plaintiff will be calling on Monday and the order in which they will be called. Counsel are to give similar advice at the end of each trial day; defendants' counsel shall have the same responsibility in advance of defendants' case. Also, no later than noon on September 26, counsel shall meet to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions

put to the witness by the opposing party and argue the objection at any bench conference.

If counsel call the opposing party's witnesses as adverse witnesses, counsel for the opposing party may choose whether to ask only clarifying questions of the witness and call the witness in its own case or do all its questioning during its opponent's case, in which case the party calling the witness will have an opportunity to respond with questioning. If counsel choose the first option, they are free to call the witness during their case. Counsel have the same two options as to any adverse witness; they are not bound by their decision on questioning any previous witness.

Counsel for plaintiff is to provide copies of documentary evidence to the court before the start of the first day of trial. Defendant has provided its copies.

The parties filed only one motion in limine. Defendant asked the court to bar plaintiff from introducing evidence about the new market credits to which it allegedly lost access. The motion was granted when plaintiff was unable to explain why it would have had any reasonable expectation to recovering those losses. (Nothing in the Conditional Commitment refers to such new market tax credit financing.)

At trial, counsel for plaintiff should be prepared to discuss in more detail the basis for his damages claim and state whether plaintiff is suing for loss of expectation, that is, for losses incurred and opportunities missed out on, or for some other form of damages. At this point, it is not clear what his theory is. In addition, defendant should be prepared to explain

why it thinks that separate questions on causation and damages are proper for each of plaintiff's three claims (Omega's breach; Omega's unfair trade practices; and Cummings's misrepresentations), when it does not appear that plaintiff is asking for different damages for each claim.

Entered this 25th day of September, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge